

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE UNITED STATES FOR THE USE AND BENEFIT
OF PLATINUM MECHANICAL, LLC,

Case # 07 civ. 3318 (CLB)(LMS)

Plaintiff,

-against-

UNITED STATES SURETY COMPANY,
US SPECIALTY INSURANCE COMPANY and
CFP GROUP, INC.

Defendants.

REPLY AFFIDAVIT OF PATRICK
RYAN IN FURTHER SUPPORT
OF ADDITIONAL DEFENDANT
ON THE COUNTERCLAIM
UTICA MUTUAL INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT

CFP GROUP, INC.,

-against-

UTICA MUTUAL INSURANCE COMPANY.

Additional Defendant on the Counterclaim
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PATRICK H. RYAN, being duly sworn, deposes and says:

1. I am a Staff Attorney employed by Utica Mutual Insurance Company ("Utica Mutual"), the additional defendant on the counterclaim in the above-entitled action and as such I am personally familiar with the facts and circumstances set forth below. I submit this affidavit in further support of Utica Mutual's motion for summary judgment.
2. In the course of document exchanges in this litigation, Utica Mutual received an e-mail exchange dated March 6 and March 7, 2007, together with an attached modification of contract extending the contract completion date for the underlying contract at issue No. W912PQ-06-C-0004 from March 10, 2007 to March 30, 2007. The e-mail exchange and modification are annexed as Exhibit I.

3. Additionally, Utica Mutual received a copy of a letter dated March 12, 2007 from CFP to Platinum Mechanical, annexed as Exhibit J.

4. In its opposition papers, CFP argues that its March 19, 2007 letter addressed to Platinum Mechanical was its notification of default to Utica Mutual because a copy of the letter was sent to Tara Lavediere of Atlynx Surety Brokers, LLC as agent of Utica Mutual. Atlynx Surety Brokers, however, is an independent brokerage located at Suite 2, 777 Zeckendorf Blvd., Garden City, New York 11530-2127. Although Ms. Lavediere had authority by power of attorney to execute the bond on behalf of Utica Mutual, the bond itself specifically provides the address of Utica Mutual for all notices provided under the bond.

5. In Paragraph 10 of the Performance Bond, it states "notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the signature page." The address shown on the signature page for the "Surety" is Utica Mutual Insurance Company, 180 Genessee Street, New Hartford, New York 13413. This is the address of the home office of Utica Mutual Insurance Company where its claims office, the offices of the undersigned, are located.

6. The reason for providing a specific address for delivery of notices under the bond is to avoid any confusion and to assure that all such notices are received for processing by the claims department that handles all such claims on behalf of Utica Mutual Insurance Company.

7. As stated in my initial affidavit submitted in support of this motion, by letter dated May 2, 2007 (Exhibit E to my initial affidavit) CFP gave its first notice to Utica Mutual at the address specified in the bond.

8. In any event, the March 19, 2007 letter sent by CFP to Platinum was not preceeded, as required, by a pre-default notification and/or by a request and attempt to arrange a conference

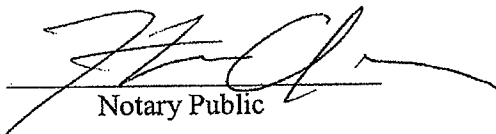
among CFP, Platinum, and Utica Mutual, all as required under Paragraphs 3.1 and 3.2 of the Performance Bond.

9. Thus, whether one looks to the May 2, 2007 letter or March 19, 2007 letter, both are declarations of contractor default and neither was sent twenty days after the pre-default notification required by Paragraph 3.1. Pre-default notification was never sent by CFP to Utica Mutual, nor was pre-default notification communicated to Utica Mutual in any manner.

10. For these reasons and the reasons stated in my prior affidavit and the other papers submitted by Utica Mutual, it is respectfully requested that Utica Mutual's motion for summary judgment be granted in all respects.


PATRICK H. RYAN

Sworn to before me this
13th day of November, 2007


Notary Public

HEATHER A. HAGLUND
Notary Public, State of New York
No. 02HA6021931
Qualified In Oneida County
Commission Expires March 22, 2011

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

TONI M. COCUZZO, being duly sworn, deposes and says:

That deponent is not a party to this action, is over the age of 18 years and located in New York, New York.

That on November 14, 2007, deponent served the within **REPLY AFFIDAVIT OF PATRICK RYAN IN FURTHER SUPPORT OF ADDITIONAL DEFENDANT ON THE COUNTERCLAIM UTICA MUTUAL INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT** upon:

Thomas G. De Luca (TDL 6312)
Attorneys for Defendant - Counterclaimant
CFP Group, Inc.
11 Commerce Drive
Cranford, New Jersey 07016

-and-

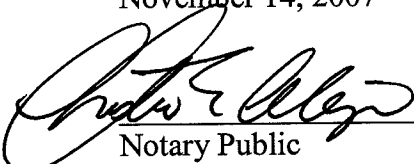
Lori Vaughn Ebersohl
LORI VAUGHN EBERSOHL, PLLC
252 North Washington Street
Falls Church, VA 2204

Paul G. Ryan (PR-2374)
WELBY, BRADY & GREENBLATT, LLP
Attorneys for Plaintiff
Platinum Mechanical, LLC
11 Matrine Avenue
White Plains, New York 10606

at the address designated by said attorney and/or party for that purpose, by depositing the same, enclosed in a postpaid, properly addressed envelope directed to said persons at the above address, in an official depository under the exclusive care and custody of United States Post Office.


TONI M. COCUZZO

Sworn to before me on
November 14, 2007



Notary Public

CHRISTINE E. ALEJO
Notary Public, State of New York
No. 01AL6082525
Qualified in New York County
Commission Expires May 19, 20__